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SIPDIS

STATE FOR INL/PC MAREN BROOKS, L/LEI FOR KEN PROPP; DOJ FOR OIA/KEN HARRIS

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TAGS: [CASC](#) [KCRM](#) [KJUS](#) [PREL](#) [EUN](#) [USEU](#) [BRUSSELS](#)

SUBJECT: STATUS OF BILATERAL PROTOCOLS ON EXTRADITION AND MUTUAL LEGAL ASSISTANCE

REF: BRUSSELS 03211

11. The U.S.-EU Agreements on Extradition and Mutual Legal Assistance were signed at the Summit in Washington on June 25, 2003. Before these agreements can be sent to Congress for ratification, protocols to existing bilateral extradition and MLATs must be negotiated. In the limited instances where there are no existing bilateral treaties on the subject, new agreements will be necessary to create a bilateral obligation to bring into force the U.S.-EU Agreement. The U.S.-EU Agreements and the bilateral protocols will then be sent forward as a package for ratification.

12. The first three sets of bilateral protocols with Copenhagen, Italy and Ireland were largely completed October 29-30 in Brussels. The next tranche of countries (Austria, Greece, Germany, Finland, the Netherlands, Luxembourg, and possibly Belgium) will be addressed the week of November 17. Negotiations with the balance of the current EU member states (those considered to be potentially the most difficult) will be held in January 2004. It is hoped that the protocols with the ten accession states can also be concluded prior to submission of the package to Congress. However, if this is not likely, those protocols can be submitted at a later date.

13. The intent of the bilateral protocols is to formally incorporate the updated provisions of the new U.S.-EU Agreements into the existing treaties. Where no extradition or MLA treaty exists, the U.S.-EU Agreements form the initial bases for bilateral cooperation. Bilateral treaty articles not addressed in the U.S.-EU Agreements are unaffected and continue in force. It is intended that each protocol will have an annex in which the specific changes to the bilateral treaties are spelled out. Italy presented draft annexes in the form of a "consolidated" text; i.e., those bilateral articles affected by the U.S.-EU Agreements. Articles not affected by the U.S.-EU Agreement are, however, not incorporated but remain in effect. USDEL welcomed these drafts and will urge the adoption of this approach whenever possible in all future negotiations.

14. There is an unresolved issue with the Irish extradition protocol. Under Irish law there is an 18-day deadline for production of extradition request documentation to the Irish court in order for a suspect who is being held provisionally to continue under arrest. Without the extradition request being in the court, the suspect must be released on the 18th day. The U.S.-EU Extradition Agreement specifies, however, that documents delivered to the Irish Embassy in Washington within this deadline meet the requirement. On the contrary, the Irish delegation thought the necessary documentation had to be in the hands of the courts by the deadline, not the Irish Embassy. They agreed to inquire whether certification by the Ministry of Justice that documentation was received by the Irish Embassy in Washington meets the deadline requirements.

SCHNABEL